

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

March 12, 2003

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan and Sandhu
Absent: Williams
Staff: Faubion, Heyden and Rodriguez

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
February 26, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of February 26, 2003.

Tambri Heyden, Planning Manager, noted that the motion for New Business Item No. 1 on page 4 for number of ayes should be changed from 7 to 5, and that on page 5, the number of ayes should be changed from 7 to 6.

Motion to approve the minutes of February 26, 2003 with the changes indicated.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Ms. Heyden announced that during the Commission's recent discussion of the Great Mall parking annual supply/demand study, staff indicated they would field verify whether all the black outlining of the white directional sign lettering had been completed. Staff performed a site visit and work is complete.

Commissioner Nitafan invited the public to the awards dinner celebration at the Milpitas Community Center that will be held on Saturday, March 15, 2003 at 6 p.m. for the Citizen of the Year, Firefighter of the Year, and Policeman of the Year and noted that the price is 30 dollars per person. Chair Hay asked if registration forms were available tonight and Commissioner Nitafan said "Yes".

Commissioner Galang responded back to staff's inquiry on the type of satellite dishes in his home discussed at the February 26, 2003 meeting and replied that he has Direct T.V. and a satellite dish to receive Filipino stations.

**VI.
RECOGNITION OF
FORMER ASSOCIATE
PLANNER MARINA
RUSH**

Chair Hay recognized former **Associate Planner Marina Rush** noting Marina's accomplishments with the City and the Planning Commission, and thanked Marina for all her hard work. Chair Hay also gave Marina a certificate of appreciation and a bouquet of flowers.

Ms. Rush thanked City Council and the Planning Commission saying, "The City of Milpitas was an exciting place to work for and a wonderful City. It was a hard decision to leave, but I am on to the next segment of my life".

RECESS

A 15-minute recess was called at 7:15 p.m. for cake and refreshments.

The meeting resumed at 7:30 p.m.

**VII.
APPROVAL OF
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

**VIII.
CONSENT CALENDAR
Item Nos. 1 and 2**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Hay opened the public hearing on Consent Item Nos. 1 and 2.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 1 and 2**

Motion to close the public hearing on Consent Item Nos. 1 and 2.

M/S: Nitafan/Sandhu

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1 and 2.

- *1 USE PERMIT NO. P-UA2002-21:** Request for reduction in the number of parking spaces required by code to add 24 seats and beer and wine sales at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. (PJ #2306) *(Recommendation: Approval with Conditions)*
- *2 USE PERMIT NO. P-UA2003-1 and 'S' ZONE AMENDMENT NO. P-SA2003-14:** A request to operate a year round Farmer's Market (APN 28-13-015) in the Milpitas Town Center East front parking lot twice a week. Applicant: Pacific Coast Farmer's Market Association. Project Planner: Kim Duncan, 586-3283. (PJ# 2317) *(Recommendation: Approval with Conditions)*

M/S: NitaFan/Sandhu

AYES: 6

NOES: 0

**IX.
NEW BUSINESS**

Chair Hay introduced Agenda Item No. 1 under New Business.

**1. ZONING ORDINANCE
TEXT AMENDMENT NO.
P-ZT2003-1 (ORDINANCE
NO. 38.761): Staff Contact:
Felix Reliford, 586-3071**

Felix Reliford, Principal Housing and Neighborhood Preservation Manager, presented the Zoning Ordinance Text Amendment No. P-ZT2003-1 (Ordinance No. 38.761) and discussed the proposed ordinance regarding affordable housing and in-lieu housing fee and mentioned that no action was required from the Planning Commission other than to provide guidance and direct staff to proceed with the zoning code amendment presented. Mr. Reliford mentioned that the City's goal is to achieve 20% of affordable housing in developments and noted that staff had met this morning with the Santa Clara County Association of Realtors who are against the 20% as a requirement.

Commissioner Giordano reiterated the fact that she had requested a six-month review of the Housing Element and asked if the goals that were set out then were achieved. Mr. Reliford replied that the City was required to meet ABAG's requirements of 400 units and that 25% of that goal has been met. He said the City is on target so far but the economy is what determines housing.

Commissioner Giordano asked what started the in-lieu housing fee requirement and Mr. Reliford responded that the Midtown Plan required an in-lieu housing fee and staff expanded the policy to include projects outside Midtown for fairness, so that affordable housing can be distributed equally throughout the community.

Commissioner Giordano referenced Policy Number 3.6 and questioned how a goal could be made mandatory. Mr. Reliford responded that a determination has not been made yet and that the 20% is only a recommendation.

Commissioner Giordano stated that, "The Housing Element philosophy concerned the promotion of low and income households and that the density bonus allotments with the three options will not satisfy the future needs of affordable housing". Mr. Reliford responded that staff reviewed the Midtown and General Plan, and that the City will continue to target 20% of units in multi-family residential projects on a project by project basis.

Chair Hay commented that he and Commissioner Williams served on the Midtown Subcommittee and given the uniqueness of the properties, the focus was deliberate to have flexibility with developers in the area.

Commissioner NitaFan whether the city's affordable housing complies with the state. Mr. Reliford replied that the City is less than a third of the way to building low and very low housing units and that with moderate and above housing, the market takes care of itself. He said that low and very low housing requires subsidy and it is hard for developers to come to the table. The process has to be fair and equal with both sides and currently there is 20 million dollars allocated for affordable housing.

Commissioner Nitafan asked if we are now in compliance and Mr. Reliford responded that the City has from now to the year 2006 to be in compliance and that no city builds all of its units. The average affordable housing built in Santa Clara County is 52 % and in the City of Milpitas it is 80% affordable housing.

Commissioner Nitafan referenced Section 54.21-8 and asked what would happen if the purchasers maintain a Below Market Rate (BMR) dwelling as a primary residence and Mr. Reliford responded that the City does not want a scenario where we have legal agreements to enforce and we try to match that income.

Commission Nitafan asked if a purchaser who is the primary owner would be able to rent out the property and Mr. Reliford responded that this defeats the purpose for first time homebuyers to allow them to rent out that unit. They would have to certify that they live there every year so they can't make a profit because that is against regulations.

Commissioner Nitafan asked how the city monitors that owners are living in their BMR dwelling and Mr. Reliford responded that every year staff certifies that people are living there by checking their W2 forms, water bills and utility bills. Commissioner Nitafan asked what would happen if the owner is not occupying the residence and Mr. Reliford responded that legal action would be taken.

Commissioner Nitafan asked about maintaining the property for 30 years and Mr. Reliford responded that 30 years has been recommended to maintain the city's investment.

Commissioner Nitafan asked if in ten years, the next-door unit is selling for more money and the BMR home is selling for less, how the problem is alleviated. Mr. Reliford responded that everything is done confidentially and that developers are not allowed to cut back. The units should look exactly the same on the outside except for maybe a smaller size.

Commissioner Nitafan inquired about titles and CC&R's and Mr. Reliford responded that the City never looks at anyone's CC&R's.

Vice Chair Lalwani asked if the in-lieu housing fee was started because of Midtown and Mr. Reliford responded, "Yes".

Vice Chair Lalwani asked how this compares with other cities and Mr. Reliford responded that a lot of cities have in lieu housing fees and some of them have inclusionary zoning which can be anywhere from 5% to 30%. The higher the number the more affordable housing you have.

Vice Chair Lalwani inquired about San Jose or Fremont and Mr. Reliford responded that he has a list of 16 cities and will bring it back to the Planning Commission.

Commissioner Galang asked if the 20% housing fee is only in the Midtown Plan and Mr. Reliford responded that the Midtown Plan and the General Housing Element target at least 20% in all developments.

In response to Commissioner Galang, Mr. Reliford responded that currently, Terrace Gardens, Monte Vista, Parc Metro West and Parc Metro condos all have a low interest loan. He stated that the concept behind that was to have affordable housing for first time buyers.

Commissioner Galang asked who benefits from this and Mr. Reliford responded that the City and HUD benefits.

Commissioner Sandhu asked what system is used to monitor the units that are low income. Mr. Reliford referenced Section 54:21-8 and stated that the goal is to establish requirements in regards to fair housing laws. He said it is separated into three categories, Milpitas residents, Milpitas workers and others. There is a lottery that is held along with a list that is sent to the lender.

Commissioner Sandhu asked what is the experience of the city if you fund directly to the people instead of the developer and Mr. Reliford responded that the program is a combination of both.

Chair Hay asked if the 20% is mandatory now and Mr. Reliford responded "No".

Chair Hay asked how you attain flexibility if it is mandatory and Mr. Reliford responded that if the developer doesn't provide the units, he provides a fee and when this ordinance goes before the Council, a resolution will state the justification for the fee.

In response to Chair Hay's question, Mr. Reliford replied that we currently have no in-lieu fee and we don't collect money from developers.

Kit Faubion, City Attorney mentioned that the concern here is two fold. The draft presented tonight has a 20% basis for comparison target as a goal, and it is clear that 20 percent is a policy of the Midtown plan, which makes sense to have that target. She said that the intent is to protect the ordinance from being arbitrary but to keep it as a live tool.

Commissioner Galang voiced his concerns that the random lottery for the affordable housing should be done after the credit check so that applicants can be treated fairly. Mr. Reliford assured the Commission that the lottery is a fair process and that the lender does the background check. Commissioner Nitafan, Vice Chair Lalwani and Commissioner Sandhu all agreed with Commissioner Galang that there might be a better way than the current lottery process and Chair Hay asked Mr. Reliford to check on the process and report back.

Commissioner Giordano asked Ms. Faubion to give her legal interpretation of the in-lieu housing fee for 20 %.

Ms. Faubion commented that policy 3.6 says there should be affordable housing units. If an in-lieu fee is going to be substituted, the City should say that there should be an equitable substitute. Allowing fees allows other cities to use the fees to leverage to provide affordable homes.

Commissioner Giordano asked if the park fees are part of the development program and felt that the 20% fee should not be mandated.

Ms. Heyden summarized that the ordinance puts in writing the flexibility the development community has enjoyed and codifies our practices. She stated that we have been successful in reaching the goal of 20% and it allows us an exception process. The exceptions are included in the paragraph which documents the kinds of things that benefit the community.

Chair Hay asked what would the City require if a developer wanted to provide a day care center in his development in exchange for a 10% reduction in affordable housing and Mr. Reliford responded that in that case, an in-lieu fee would not be required.

Chair Hay commented that it is arbitrary whether or not a day care facility is worth the ten percent or five percent of the facility. Mr. Reliford responded that it is negotiated and that such a developer would be allowed to do mid to low and moderate affordable housing.

Chair Hay asked what has been done in the past to retain flexibility and Mr. Reliford responded that affordability was negotiated.

Chair Hay asked if properties are small, does it lend to high-density development and Mr. Reliford responded that most cities have some form of a fee or inclusionary requirement or both to offset.

Chair Hay asked if there are provisions for a fee waiver and Mr. Reliford responded "Yes".

Chair Hay asked what happens if a project doesn't meet the ordinance and Mr. Reliford responded that it would not exclude the developers from paying the fee.

Ms. Faubion clarified that if a childcare center equated to 12% of the fee, the applicant would have to backfill the other 8% for a total of 20%.

Commissioner Giordano questioned the interpretation of the policy and felt that there is not a need for the 20% fee.

Chair Hay reiterated the fact that the 20% fee would be mandatory.

Ms. Heyden noted that the purpose of the policy is to standardize current practices so that an applicant can determine up front the financial impact early in the development process. She summarized the policy stating that the intent is that the developer can a) provide the 20% or b) entire 20% satisfied in fee or c) if less than the 20% is affordable housing then the rest can be paid in fee, or d) any combination of fee and improvement of public benefit or e) an improvement of public benefit equivalent to the full 20%.

Since this item was not a public hearing, Chair Hay asked if anyone in the audience wished to speak on this subject.

Heidi Wolfe-Reid, resident at 1397 Yosemite Drive and member of the Santa Clara County Association of Realtors felt that the City has done a wonderful job with affordable housing, but doesn't understand why we are trying to make market housing more expensive and mandating it. She disagrees with the 20% in-lieu housing fee and doesn't feel we should try to implement new policies when the old policies have worked just fine.

Chair Hay asked Ms. Wolfe-Reid if she is opposed to making the in-lieu fee mandatory and Ms. Wolfe-Reid responded, "Yes". Ms. Wolfe-Reid also commented that we have flexibility now, and by implementing a mandate, we take away flexibility and that a lot of the moderate and low income housing is being taken care in the market already.

Paul Stewart, Executive Director of the Santa Clara County Association of Realtors felt that Milpitas has achieved 82% of the housing goal and he always asks other cities to look at Milpitas to see how things are done with affordable housing, but feels that the in-lieu fee shouldn't be mandated. Mr. Stewart gave an example of how Sunnyvale has had a BMR program since 1980 and that Sunnyvale has only built 872 affordable units. Mr. Stewart felt that "If ain't broken, why are you trying to fix it", and that "only the government would take something that is working perfectly fine and try to change it". He disagrees with the in-lieu housing fee.

Commissioner Nitafan made a motion to close the public hearing and Mr. Reliford reminded him that this item is not a public hearing.

Commissioner Giordano commented that she supported the policies for the Housing Element, and also wanted to see a six-month review for the Housing Element, but doesn't see a need for the in-lieu housing fee.

Commissioner Nitafan felt that the information given tonight is premature and feels the City should stick with current policies. Commissioner Nitafan also commented that he would support the fee only if the developers are willing to do what we have been doing in the past. He also reiterated for staff to check on the current lottery system so that everyone is treated fairly and that no one is being discriminated against.

Commissioner Sandhu commented that he would support the in-lieu housing fee and also agreed that staff should look into the lottery system so that it is non-discriminatory. He mentioned how he has heard comments from people on how they have applied for homes and did not get a response from the City. Mr. Reliford assured Commissioner Sandhu that he always returns phone calls.

Commissioner Galang agreed with Commissioner Giordano and Commissioner Nitafan that tonight's information is premature. He also asked staff to check into the current lottery system.

Chair Hay commented that the City has been very successful so far and that this fee might make us liable. He noted that there is an issue of market rate housing and overpriced housing. When demand exceeds supply, the price goes up and that is what occurred in this valley. He doesn't see a need for it and he sees it as a negative impact to the market rate.

**2. CITY'S 50TH
ANNIVERSARY
SUBCOMMITTEE:** *Staff
Contact: Tambri Heyden,
586-3280*

Mr. Reliford commented that there is nothing magical about 20%, and that it is only a goal. Chair Hay said that he doesn't have a problem with 20%, but feels it is a problem with taking away the flexibility we currently have.

Chair Hay opened Agenda Item No. 2 under New Business.

Chair Hay noted that the basic job of the Subcommittee members is to recommend a plan for Council for the January 26, 2004 celebration. The Subcommittee members would have to meet for a total of six meetings throughout the year to brainstorm ideas and prioritize plans for City Council.

Chair Hay noted he was contacted by the City Manager's Office to select a volunteer by tonight and that he spoke with Commissioner Williams (who is absent tonight) that he would like to volunteer for the Subcommittee, and as Chair, he is appointing Commissioner Williams.

Vice Chair Lalwani expressed her desire to work with the subcommittee and mentioned that she would like to volunteer.

Commissioner Sandhu stated that since this item is on the agenda, the Commission should select a member.

Chair Hay stated that Commissioner Williams would be leaving the Commission at the end of the year (after his term expires), and felt he should be selected as the volunteer.

After further discussion, the Commissioners decided to vote for Commissioner Williams or Vice Chair Lalwani.

Motion to appoint Vice Chair Lalwani as the volunteer for the City's 50th Anniversary Subcommittee.

M/S: Sandhu/Galang

AYES: 3

NOES: 3 -- (Hay, Giordano, Nitafan)

Motion to appoint Commissioner Williams as the volunteer for the City's 50th Anniversary Subcommittee.

M/S: Hay/Giordano

AYES: 3

NOES: 3 -- (Galang, Lalwani, Sandhu)

Ms. Heyden stated that she really felt that the City would not object to have more than one volunteer.

Vice Chair Lalwani objected to the whole process of the Chair having already made an appointment without Planning Commission action on it and asked if staff could follow up and see if more people can volunteer.

Ms. Faubion stated that it is within the purview of the Commission to vote and since a tie vote ensued and there has not been a change to the situation under the Bylaws the chair can decide. Since the Chair appointed Commissioner Williams, the decision that the Chair was asked to make stands.

Vice Chair Lalwani stated her position that the process is unfair.

Chair Hay stated that he would like to appoint an alternate.

Motion to appoint an alternate for the City's 50th Anniversary Subcommittee.

M/S: Nitafan/Giordano

AYES: 5

NOES: 0

ABSTENTIONS: 1 (Lalwani)

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:50 p.m. to the next regular meeting of March 26, 2003.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary